

¹ The policy provides the ALJs some latitude in the application of the Medical-Vocational

ALJ's decision, she "was five months away from a higher age category (advanced age) that would have – considering her RFC (light exertion), education (high school), and work experience (unskilled) – resulted in a finding of disability." [Id. at 5] Plaintiff claims that the ALJ's determination that she was not disabled "turned on her age" and "the ALJ did not articulate consideration of the Borderline Age Policy." [Id. at 4]

Defendant filed the instant motion to reverse and remand the case for further action under sentence four of section 405(g) of the Social Security Act, which authorizes a court to enter "a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). See also Buckner v. Apfel, 213 F.3d 1006, 1010 (8th Cir. 2000). Defendant represents that, upon review of the record, agency counsel determined that remand is necessary "to provide the ALJ an opportunity to further evaluate Plaintiff's claim." More specifically, Defendant states: "On remand, the ALJ will further evaluate whether Plaintiff was in a borderline age situation under the Medical-Vocational Guidelines, 20 C.F.R. pt 404, subpt. P, app. 2, and which medical-vocational rule to apply."

Upon review of Plaintiff's brief in support of her complaint, the ALJ's decision, and Defendant's motion, the Court agrees with the parties that this case should be reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings.

Accordingly,

IT IS HEREBY ORDERED that Defendant's motion to reverse and remand [ECF No. 20] is **GRANTED**.

Guidelines, 20 C.F.R. Part 404, Subpart P, Appendix 2 and states that Defendant "will not apply the age categories mechanically in a borderline situation." 20 C.F.R. § 416.963(b). Rather, an ALJ is to "consider whether to use the older age category after evaluating the overall impact of all the facts" in the claimant's case. Id. A claimant falls within the borderline age category if he or she is "within a few days to a few months of reaching the older age category." Id.

IT IS FURTHER ORDERED that the final decision of the Commissioner is **REVERSED** and **REMANDED** under sentence four of 42 U.S.C. § 405(g) for reconsideration and further proceedings consistent with this opinion.

A separate judgment in accordance with this Memorandum and Order is entered this date.



PATRICIA L. COHEN
UNITED STATES MAGISTRATE JUDGE

Dated this 13th day of March, 2019